

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON RULES

Call to Order: By **CHAIRMAN FRED THOMAS**, on March 14, 2003 at 3:30 P.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Sen. Fred Thomas, Chairman (R)

Sen. Jon Ellingson (D)

Sen. Jim Elliott (D)

Sen. Duane Grimes (R)

Sen. Dan McGee (R)

Sen. Walter McNutt (R)

Sen. Corey Stapleton (R)

Sen. Emily Stonington (D)

Sen. Bob Story Jr. (R)

Sen. Jon Tester (D)

Members Excused: Sen. Vicki Cocchiarella (D) proxy
Sen. Bob Keenan, Vice Chairman (R) proxy

Members Absent: None.

Staff Present: Greg Petesch, Legislative Branch
Fredella D. Haab, Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB327, 3/12/2003

CHAIRMAN FRED THOMAS, SD 31, STEVENSVILLE, stated the one issue to discuss is to consider the acceptance of HB 327 from the House. As the committee knows, the House passed HB 327 by **REP. CHRISTOPHER HARRIS, SD 30, GALLATIN GATEWAY**, and the Senate failed to pass SB 311 by **SEN. MIKE WHEAT, SD 14, BOZEMAN**, on the Senate floor. Checking with counsel we found these bills were designed with the same purpose. Joint Rule 40-70 states, "A bill

may not be introduced or received in a house after that house, during that session, has finally rejected a bill designed to accomplish the same purpose, except with the approval of the Rules Committee of the house in which the bill is offered for introduction or reception." Since it was found to be the case with HB 327 as it was designed to accomplish the same purpose as SB 311, it was not accepted. We are having this meeting of the Rules Committee to decide whether HB 327 would be accepted even though there was an opinion that this bill was designed to accomplish the same purpose as SB 311. We are having a hearing on either bill. We are only had a meeting of the Rules Committee about whether or not these bills are designed to meet the same purpose and if there is a motion it would be to accept HB 327 into the Senate.

Mr. Greg Petesch believed that HB 327 as amended by the House is designed to achieve the same purpose as SB 311 that was indefinitely postponed on the Senate floor. The purpose is to prevent a court or a party from preventing disclosure of the contents of documents relating public hazards.

SEN. JON ELLINGSON, SD 33, MISSOULA, had a procedural question. His understanding was that this HB 327 had already been assigned to the Judiciary Committee and the question relates to whether or not by virtue of that assignment we had, in fact, already accepted it into this house?

CHAIRMAN THOMAS answered that rule 40-70 prohibited the Senate from accepting that bill. By clerical error, there was an assignment but this bill was not in front of the Senate because of that error.

SEN. ELLINGSON asked whether or not we had received it, it would be the understanding of the chair that if we had received it properly that we have the abilities in this Rules Committee to remedy that oversight or error?

CHAIRMAN THOMAS said if this committee decided by this rule, except with the approval of the Rules Committee, the majority of this committee could decide to accept the bill even though findings are that they are designed to accomplish the same purpose.

SEN. ELLINGSON had a question on the substance of **Mr. Petesch's** conclusion. He observed that **SEN. WHEAT'S** bill on lines 20-22 refers specifically to a written agreement or contract in a civil litigation that has the purpose or affect of concealing public hazards. This bill dealt with written contracts or agreements

resulting from civil litigation whereas **REP. HARRIS'** bill deals on line 12 with pleadings, motions, and other documents.

Mr. Petesch believed that the substance of the quoted material that you cited from **SEN. WHEAT'S** bill is contained in lines 27-29 of page 1 of **REP. HARRIS'** bill which was amended in by the House of Representatives.

SEN. ELLINGSON asked him to repeat that again.

Mr. Petesch said lines 27-29 of page 1 state, a written agreement or contract that is entered into pursuant to civil litigation, which he believed was the substance of what **SEN ELLINGSON** cited.

SEN. ELLINGSON said he thought **REP. HARRIS'** bill seems to indicate that it has a broader scope to him than **SEN. WHEAT'S** bill because it includes those things which were in **SEN. WHEAT'S** bill and also includes pleadings, motions, etc.

Mr. Petesch believed that **REP. HARRIS'** bill was slightly broader than **SEN. WHEAT'S** bill.

SEN. JIM ELLIOTT, SD 36, TROUT CREEK, asked **Mr. Petesch** about the bill being amended in the House and in his mind met the criteria of accomplishing the same purpose, was the bill as introduced in the House similar to this one. **Mr. Petesch** said "no." Obviously you are making a conclusion that the amendments may or may not have been made, with the consent of the sponsor, may change a bill, as to make it similar to another bill. Would that allow this rule to pertain?

Mr. Petesch said this rule only applied to the form in which the bill was received. The actions of the House are irrelevant to the actions of the Senate. The Senate can only accept the bill in the form it comes over from the House.

SEN. DAN MCGEE, SD 11, LAUREL, asked if they needed to have any particular motion at this time?

CHAIRMAN THOMAS felt that they could move on the discussion but he would be happy to have a motion on the floor to debate that discussion and then the discussion can center around that motion.

SEN. MCGEE said there may be more discussion about the argument about whether or not they are the same. He would wait until that conversation was over.

SEN. EMILY STONINGTON, SD 15, BOZEMAN, asked how much does a bill have to expand to be a different purpose? She thought that was the point **SEN. ELLINGSON** was trying to make was that **REP. HARRIS'** bill had a broader scope than **SEN. WHEAT'S** bill, therefore, it was a different purpose.

Mr. Petesch said you determine the purpose of legislation first of all by examining the titles. The titles of bills are to let the public know the purpose of the bill and if you examine the titles **SEN. WHEAT'S** bill prohibits the court from entering into a judgement or order that conceals a public hazard or conceals information that would be useful to members of the public in protecting themselves. **REP. HARRIS'** bill provides that except in certain cases the public has a right to know the contents of documents in a civil action which would be judicially related to a public hazard and that provides an applicability date. So, to me both are designed to prevent matters in litigation from concealing information related to public hazards. He believed the titles clearly expressed those purposes.

SEN. STONINGTON asked if HB 327 had stopped at documents in a civil action then would it have been different?

Mr. Petesch said **REP. HARRIS'** bill as introduced did not specifically apply to public hazards only.

SEN. MCGEE said he was going to concede that in fact **Mr. Petesch** was correct that the bills are in the language of 40-70 are designed to accomplish the same purpose. He didn't support HB 327 with the current language that was in it but he made a motion with the idea that it would go through our normal process with all the magic we do with bills.

Motion: **SEN. MCGEE moved THAT THEY ACCEPT HOUSE BILL 327.**

SENATOR DUANE GRIMES, SD 20, CLANCY, thought there was a principle here that made the process work and we need to stick to it so he was opposing the motion.

SEN. ELLINGSON was going to support the motion. He thought there was another significant difference between **SEN. WHEAT'S** bill and **REP. HARRIS'** bill and that is found on line 18 and 19 of **SEN. WHEAT'S** bill. **SEN. WHEAT'S** bill prohibits a court from entering an order or judgment that has the purpose or effect of concealing a public hazard or any information concerning a public hazard. That direct mandate to the court is not in **REP. HARRIS'** bill. HB 327 just says the public has a right to this information. It does not specifically prohibit a court from doing this. He thought that was another significant difference.

CHAIRMAN THOMAS said it seemed to him that this bill does fit this rule 40-70 without a doubt as **SEN. MCGEE** has stated. It was his encouragement that they follow their rules. We work hard, all of us do, and know these rules and follow these rules. This vote we are going to take in a few seconds does not have to do with the substance of these bills. It has to do with whether or not they meet this rule. It is solely what is at stake in this vote. He believes that the Senate has already acted on this bill, it rejected this bill. To bring it before the body again, is a violation of our rules. He thought it was clear that the rule applies and he thought they should reject the motion.

SEN. STONINGTON said she supported the motion for almost exactly the same reasons as you said. We are looking at this, we are discussing whether these bills, and she would concede also, are similar in purpose but that this committee has the authority to say let's debate it. At any rate I think considering Rep. Harris' bill is an appropriate step to take.

SEN. ELLIOTT asked **Mr. Petesch** the reason for this rule is to basically save time and have an efficient operation of the legislature. If one house of the legislature has killed the bill similarly it is assumed then that another bill identical to that would also be voted down. **Mr. Petesch** believed it was accurate.

Mr. Petesch said the rule had been in the Joint Rules as long as he could remember and its purpose was efficiency of the process.

SEN. MCGEE said he had debated this issue extensively in his own mind and he wondered if when Senate Judiciary were ever to finish work on something like this, if **REP. HARRIS** would even want to own the bill. He really couldn't vote in favor of the bill the way it is, but he did believe it was an important issue. He thought this was an important issue that they needed to address and for that reason he made the motion. He would like to see the bill come over from the House, be accepted by the Senate and then they can do the work that they do. He did not know whether or not the bill would survive and he understood that in making this motion

Motion/Vote: **SEN. MCGEE** moved TO ACCEPT HB 329 . Motion failed 4-8 with **COCCHIARELLA, ELLIOTT, GRIMES, KEENAN, MCNUTT, STAPLETON, STORY, and THOMAS** voting nay.

CHAIRMAN THOMAS said the bill would not be accepted via that motion.

ADJOURNMENT

Adjournment: 4:00 P.M.

SEN. FRED THOMAS, Chairman

FREDELLA D. HAAB, Secretary

FT/FH

EXHIBIT (rus54aad)